

Laws that Affect Placement Decisions in Order of Preference

When a child is removed from the home, the decision for placement must be based on the constitutional, federal and state laws in the order that they are listed below. If the federal laws and Missouri state laws conflict, then federal law will supersede the state law. Based on each individual situation, both the facts and circumstances as well as the law must be considered. The factual basis for the decision to place or not to place with a parent, grandparent or other relative must be documented in FACES, the CS-1, and court reports explaining why the placement is or is not in the best interest of the child.

Within the table below, each heading is a brief explanation of the applicable law and the requirement or limitation that would apply.

Placement with a Fit Parent

Prior to placement or if a child comes into care, first consideration should be given to a fit parent whether non-offending or non-custodial.

US Constitution	A fit parent must be given first consideration BEFORE a child is removed from the home, unless there is a factual basis to meet the "imminent danger" standard for removal in §210.125, RSMo, or unless the child is removed by the judge after a petition is filed and a hearing held.
§210.305, RSMo	Missouri law recognizes a fit parent's right to placement over a grandparent or relative.
§211.037, RSMo	Non-offending Parent Law: The non-offending parent law requires placement with that parent with some exceptions, as long as that parent is entitled to physical custody
§210.117, RSMo §211.038, RSMo	Prohibition on Reunification or Placement: If the child comes into the custody of the state, the law prohibits placement or reunification with a parent if the background check of the parent or other living in his/her household shows that that person has been found guilty of or pled guilty to certain Missouri felony offenses under chapter 566 and 568 where a child was a victim. <i>Note: some criminal convictions, including out of state convictions, may not be on this list but may still be inappropriate for placement.</i>

Placement with Indian Relatives (Federal Law)

When a child comes into custody, federal law requires that if there is Indian heritage, the tribe must be notified, it must determine if this is an Indian Child under ICWA and then ICWA placement procedures must be followed.

ICWA 25 U.S.C. §1915

If the child is an Indian Child, then placement with relatives must be made as determined by tribal law or customs

Note: relatives are otherwise defined as grandparent, aunt or uncle, brother or sister (including in-laws), niece or nephew, first or second cousins, stepparent

ICWA 25 U.S.C. §1912(e)

An Indian Child cannot be placed in foster care unless there is clear and convincing evidence, including testimony of a qualified expert witness, that the continued custody is likely to result in serious emotional or physical damage to the child.

Placement with Siblings (Federal Law)

42 U.S.C.A. §671(a)(31)

Federal law requires the division to exercise reasonable efforts to place siblings removed from their home in the same placement, unless the division documents in the case file that it is contrary to the safety or well-being of any of the siblings.

Federal law makes no distinction between whole and half siblings.

CWM Section 4, Chapter 7.5

Requires siblings to be placed together. If siblings are not placed together administrative reviews are required monthly to comply with federal law.

Placement with Grandparents (Missouri Law)

Missouri laws require placement preference for grandparents and other relatives over non-related caregivers, unless the division documents how it is contrary to the child's best interest.

§210.305, RSMo §210.565.1, RSMo	<p>The law <u>requires</u> the division to begin making diligent efforts to locate, contact and place with a grandparent within 3 hours when an initial emergency placement is deemed necessary after all of the child's physical needs have been attended to <u>unless</u>:</p> <ol style="list-style-type: none"> 1) the division determines that placement with a grandparent(s) is not in the best interest of the child; <u>and</u> 2) subject to background checks under §210.482, RSMo for emergency placement. <p>The law requires the division to document in writing the reason a grandparent has been denied emergency placement and shall have just cause to do so.</p> <p>The law requires all diligent efforts to locate, contact and place with a grandparent to be documented in writing.</p>
§210.305, RSMo	<p>Although the law allows the child to be placed in a temporary emergency placement during the initial 3 hours or when a grandparent cannot be located, there is a continuing obligation to make diligent efforts to locate, contact and place with a grandparent or grandparents or another relative. A grandparent would continue to have preference under §210.565.1, RSMo.</p>

Note: *Emergency placement* as referenced above is defined as those limited instances when the division is placing for an initial placement of a child in the home of private individuals, including neighbors, friends, or relatives, as a result of a sudden unavailability of the child's primary caretaker. §210.305, RSMo

The factual basis for the denial of placement with the grandparent or relative must be documented in writing.

§210.565.1, RSMo	If there are competing grandparent requests for placement, the FST shall make recommendations to the court.
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OTHER MISSOURI LAWS THAT AFFECT STATUS AS A GRANDPARENT

A grandparent's status is not affected by his/her own son or daughter's death or dissolution of marriage
§210.565.2, RSMo.

Under §211.177.1, RSMo, the law gives grandparents the right to become a party to the juvenile court case when custody of a grandchild is at issue unless the judge decides it is against the best interests of the child.

Under §211.177.2, RSMo, grandparents' right to intervene and seek custody of their grandchild in the underlying juvenile court case may terminate upon adoption except where the child is adopted by another grandparent, blood relative or step-parent.

Other Adult Relative Placement (Missouri Law)

If grandparents are not available within the first 3 hours when the emergency placement is deemed necessary, CD shall continue the diligent search to contact, locate and place with grandparent or other relatives §210.305.3, RSMo.

§210.565.2, RSMo	<p>Relatives are defined as "grandparents or any other person related to another by consanguinity (blood) or affinity (marriage) within the third degree," which would include:</p> <ul style="list-style-type: none"> • Great grandparents • Grandparents • Aunts and uncles • Adult siblings • Also includes those listed above by marriage.
CWM, Sec 4.22.3	<p>For guardianship subsidy purposes, relative is defined as grandparent, great-grandparent, aunts, great-aunts, uncles, great-uncles, adult siblings and first cousins</p> <ul style="list-style-type: none"> • Includes ½ siblings based on 1 parent in common • Blood relatives only.

Child's Preference for Placement

§210.565.7, RSMo	<p>The GAL is required to ascertain the child's preference for placement by interview if age appropriate.</p> <p>The child's wishes must be considered but does not trump statutory preferences and is not a basis for a contrary to the welfare of the child finding to prevent the relative placement.</p>
42 U.S.C.A. §675 (C)(iii)	<p>Under federal law, at any permanency hearing, the court conducting the hearing must consult with the child, in an age appropriate manner, regarding the proposed permanency or transition plan for the child. This would seem to include placement.</p>

Kinship Placement (CD Policy)

A parent may prefer a kinship placement over a relative, however:

§210.565, RSMo	<p>The statutory mandate for relative placement must prevail over a parent's preference for non-relative kinship option unless a court makes the required finding that the relative placement would be contrary to the child's best interest; or</p>
§210.566.4(3), RSMo	<p>If the child re-enters care and is not placed in a relative's home, the child's former foster parent shall be given first consideration for placement.</p>
CWM, Sec 4.12.1	<p>Kinship is defined as persons not related by blood, marriage or adoption but a close relationship exists between the child and kinship provider. Kinship includes those non-related persons living in one house under one head or management; or non-related persons not living together but whose lives are so intermingled that the relationship appears as one of blood relationship. Examples of non-related persons include godparents, neighbors, teachers, close family friends, and fellow church members.</p>

Placement with Foster Parents

(Missouri Law)

The law allows a temporary emergency placement until relatives are found. If a child re-enters care and is not placed in a relative's home, the foster parents with whom the child was previously placed shall have first consideration for placement.

§210.565, RSMo §210.305.1 and .3, RSMo	<p>A child may be placed with foster parents in the first three hours after an emergency placement is deemed necessary or when no grandparents or other relatives have been located.</p> <p>Despite the foster care placement, diligent efforts must continue to locate, contact and place with a grandparent or other relatives until the court has made findings on the record of why it is contrary to the child's best interest to be placed with a grandparent or other relatives.</p> <p>The division must also document in writing the reasons the grandparent or relative has been denied emergency placement.</p>
§210.566.4(3), RSMo	If a child reenters care and is not placed in a relative's home, the foster parents with whom the child was previously placed shall have preference for placement.
§453.070.7, RSMo	There is a foster parent preference for placement for adoption once the child has been placed with this family for 9 months.

Notification Requirements

Grandparent and Other Relative Notification

(Federal Law)

Within **30** days after removal, the division is required to identify and provide notice to all adult grandparents and other adult relatives of the child.

42 U.S.C.A. §671 (a)(29) §210.565.6, RSMo	<p>Within 30 days after removal, the division must exercise due diligence <u>to identify and provide notice</u> to all adult grandparents and other adult relatives of the child</p> <ul style="list-style-type: none"> • Including any other adult relatives suggested by the parents • Exception for family or domestic violence. <p>Notification requirements:</p> <ul style="list-style-type: none"> • Notice that the child is or has been removed from the custody of the parent(s); • Explanation of federal and state laws that allow them to participate in the care and placement of the child, including options lost by failing to respond to the notice; • Description of the requirements to become a foster family home for this child and the supportive services which would be available including the provisions for waiver of non safety licensure standards on a case by case basis that would otherwise impede their licensure; and • Description of the availability of subsidy for the relative guardianship option for permanency.
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